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10/525872

PATENT

Docket No. 960/172

## DECLARATION AND POWER OF ATTORNEY FOR PATENT APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

### APPARATUS FOR CONTROLLING VALVE ACTUATION IN INTERNAL COMBUSTION ENGINE

the specification of which is attached hereto unless the following is entered:

was filed on	as United States Application Number or PCT International Application Number	and was amended on (if applicable)
June 4, 2004	PCT/JP2004/008185	

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR §1.56.

### PRIOR FOREIGN APPLICATION(S)

I hereby claim foreign priority benefits under 35 USC §119(a-d) or §365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT International application which designated at least one country other than the United States, listed below and have also identified below any foreign application(s) for patent or inventor's certificate, or PCT International application having a filing date before that of the application on which priority is claimed:

Application Number	Country	Filing Date (day/month/year)	Priority Not Claimed
Pat. Appln. No. 2003-159171	Japan	04 / 06 / 2003	

### PROVISIONAL APPLICATION(S)

I hereby claim the benefit under 35 USC §119(e) of any United States provisional application(s) listed below:

Application Number		Filing Date	

### PRIOR UNITED STATES APPLICATION(S)

I hereby claim the benefit under 35 USC §120 of any United States application(s), or §365(c) of any PCT International application designating the United States, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of 35 USC §112, I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR §1.56 which became available between the filing date of the prior application and the national or PCT International filing date of this application:

Application Number	Filing Date	Status (patented, pending, abandoned)

## DECLARATION AND POWER OF ATTORNEY FOR PATENT APPLICATION (Cont.)

## POWER OF ATTORNEY

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:  
All practitioners identified at customer number 23,838

Direct telephone calls to:

JOHN C. ALTMILLER  
(202) 220-4210

Send correspondence to:  
KENYON & KENYON  
1500 K. Street, N.W.  
Washington, DC 20005-1257

I hereby declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful statements may jeopardize the validity of the application or any patent issuing thereon.

<i>1-00</i>	<b>Full name of first or sole inventor</b>	Last Name HIROWATARI	First Name Seiji	Middle Name
<i>2-00</i>	Residence	City Toyota-shi	State or Country Japan	Country of Citizenship Japan
	Post Office Address	Street c/o TOYOTA JIDOSHA KABUSHIKI KAISHA 1, Toyota-cho	City Toyota-shi	State or Country & Zip Code Aichi-ken 471-8571 Japan
	Signature	<i>Seiji Hirowatari</i>	Date	February 16, 2005
	<b>Full name of second inventor</b>	Last Name IDOGAWA	First Name Masanao	Middle Name
	Residence	City Toyota-shi	State or Country Japan	Country of Citizenship Japan
	Post Office Address	Street c/o TOYOTA JIDOSHA KABUSHIKI KAISHA 1, Toyota-cho	City Toyota-shi	State or Country & Zip Code Aichi-ken 471-8571 Japan
	Signature	<i>Masanao Idogawa</i>	Date	February 16, 2005
	<b>Full name of third inventor</b>	Last Name	First Name	Middle Name
	Residence	City	State or Country	Country of Citizenship
	Post Office Address	Street	City	State or Country & Zip Code
	Signature		Date	
	<b>Full name of fourth inventor</b>	Last Name	First Name	Middle Name
	Residence	City	State or Country	Country of Citizenship
	Post Office Address	Street	City	State or Country & Zip Code
	Signature		Date	

**Title 37, Code of Federal Regulations, Section 1.56**  
**Duty to Disclose Information Material to Patentability**

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclosure information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) Prior art cited in search reports of a foreign patent office in a counterpart application, and
  - (2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made or record in the application, and
- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
  - (2) It refutes, or is inconsistent with, a position the applicant takes in:
    - (i) Opposing an argument of unpatentability relied on by the Office, or
    - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
  - (1) Each inventor named in the application;
  - (2) Each attorney or agent who prepares or prosecutes the application; and
  - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.